2234.

SUPREME COURT OF THE UNITED STATES.

No. 84.

ALEXANDER DENNISTOUN, JOHN DENNISTOUN, WILLIAM CRAIG MYLNE, AND WILLIAM WOOD, PARTNERS UNDER THE STYLE OF A. DENNISTOUN & CO., PLAINTIFFS IN ERROR,

vs.

ROGER STEWART.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Capias ad respondendum	1	1
Cause of action	2	1
Acceptance of service	2	2
Declaration	2	2
Pleas	4	4
Continuance	4	4
Judgment entry	5	4
Bill of exceptions	5	5
Exhibits to bill of exceptions	9	8
1. Interrogatories to Joseph Bramwell	9	8
Do. Bramwell, Barrett & Winthrop	15	13
Do. Henry Orlando Jones	25	21
Do. Andrew E. Byrne	35	28
2. Commission to take Bramwell's deposition	12	10
Do. do. Bramwell, Barrett & Winthrop's deposition	18	16
Do. do. Jones's deposition	28	23
Do. do. Byrne's deposition	38	31
3. Deposition of Joseph Bramwell	13	11
Do. Joseph Bramwell	19	16
Do. Robert Barrett	21	18

GIDEON, print.

	Original	Print
Deposition of Robert Winthrop	23	19
Do. Henry Orlando Jones	29	24
Do. Andrew E. Byrne	39	31
4. Exhibit A—Letter: Byrne to Dennistoun	43	34
Do. B—Notice of protest (Bell to Stewart)	43	35
Do. R—Letter: Stewart to Bell	44	35
Error bond	44	35
Writ of error	45	36
Citation and Marshal's return	46	37
Clerk's certificate	47	37

UNITED STATES OF AMERICA,
Southern district of Alabama.

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-three—the honorable John Gayle, judge of said court, presiding.

Be it remembered, that heretofore, to wit, on the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-three, A. Dennistoun & Co. sued out of said court their writ of capias ad respondendum against Roger Stewart, in the words and figures following, to wit:

Capias ad res.

UNITED STATES OF AMERICA.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the Marshal of said district, greeting:

You are hereby commanded to take the body of Roger Stewart, merchant, who is an alien and subject of the Queen of Great Britain, and him safely keep, so that you have him before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of April, inst., to answer unto Alexander Dennistoun, John Dennistoun, William Craig Mylne and William Wood, copartners and citizens of the State of New York, in a plea of trespass on the case, to their damage twenty thousand dollars.

Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit [L. S.] court, this 4th Monday of December, in the year of our Lord one thousand eight hundred and fifty-two.

Issued the 5th day of April, in the year of our Lord one thousand eight hundred and fifty-three.

Attest: JOHN FITTS, *Clerk C. C.,*
Southern district of Alabama.

Cause of action.

£4,417 14 11. MOBILE, *Sept.* 9, 1850.

Sixty days after sight of this first of exchange, second and third unpaid, pay to the order of ourselves, in London, forty-four hundred

and seventeen pounds fourteen shillings eleven pence sterling, value received, and charge the same to account of 1,058 bales cotton per Windsor Castle.

Your obedient serv't, JAS. REID & CO.
Per pro WM. MOULT, jr.

To HY. GORE BOOTH, esq.,
Liverpool.

Acceptance.

7th Oct., 1850. Accepted for two thousand five hundred and seventy-one pounds eighteen shillings seven pence, being balance unaccepted for account of 1,058 bales of cotton per Windsor Castle, payable at Glyn & Co.

Per pro HENRY GORE BOOTH,
CHARLES BYRNE.

Endorsed:

Pay Messrs. A. Dennistoun & Co., or order.

Per pro JAS. REID & CO.,
WM. MOULT, jr.
PHILLIPS & SEWALL,
Pl'ffs Att'ys.

Acceptance of service.

We accept service of the writ, and agree that the depositions and notices in the case in the city court may be used in the trial of this case.

TAYLOR & HITCHCOCK,
P. PHILLIPS.

MOBILE, 5 *April*, 1853.

And afterwards, to wit, at the term of said court begun and held in and for said district of Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-three, the said plaintiffs filed in said court a declaration in the words and figures following, to wit:

Declaration.

Circuit court United States, fifth judicial circuit, southern district of Alabama—April term, 1853.

Alexander Dennistoun, John Dennistoun, William Craig Mylne and William Wood, copartners, doing business under the name and style of A. Dennistoun & Co., all of whom are citizens of the State of New York, by their attorney, complain of Roger Stewart, who is an alien and subject of the Queen of Great Britain, defendant in this suit in custody, &c., in a plea of trespass in assumpsit. For that, whereas, the said defendant, on the 9th September, 1850, at Mobile aforesaid, by the name and style of James Reid & Co. made his bill of exchange in writing, and directed the same to one Henry Gore

Booth, Liverpool, meaning Liverpool in the kingdom of Great Britain, and thereby requested the said Henry Gore Booth, sixty days after sight of that his first of exchange, second and third unpaid, to pay to the order of said James Reid & Co., in London, meaning London in the kingdom of Great Britain, £4,417 14 11, lawful money of Great Britain, and to charge the same to account of 1,058 bales of cotton per "Windsor Castle." And said defendant then and there, by the name and style of James Reid & Co., endorsed said bill of exchange to the plaintiffs.

And the said plaintiffs afterwards, to wit, on the 7th October, 1850, duly presented the same to said Henry Gore Booth for acceptance, who then accepted said bill for £2,571 18 7, being balance unaccepted for account 1,050 bales of cotton per Windsor Castle, payable at Glyn & Co., London aforesaid, of which the defendant then and there, to wit, in the county aforesaid, had due notice and assented to such acceptance. And though afterwards, and when the said bill became due and payable, according to the tenor and effect thereof and the acceptance aforesaid, the same was duly presented for payment at the said Glyn & Company, London, yet neither the said Glyn & Company, nor the said Henry Gore Booth or any person in his behalf, then paid the same or any part thereof; and the said bill, so accepted as aforesaid, was thereupon then and there duly protested for non-payment, of all which the defendant then had due notice; and then and there, to wit, in the county aforesaid, in consideration of the premises, promised the plaintiffs to pay them the amount of the said bill, so accepted as aforesaid, on request.

And whereas, also, the said defendant, heretofore, to wit, on the first day of February, eighteen hundred and fifty-one, to wit, in the county aforesaid, was indebted to the plaintiffs in the sum of twenty thousand dollars, for money then lent by the plaintiffs to the defendant, at his request;

And in twenty thousand dollars, for money then paid by the plaintiffs for the use of the defendant, at his request;

And in twenty thousand dollars, for money then received by the defendant for the use of the plaintiffs;

And in twenty thousand dollars, for money then found to be due from the defendant to the plaintiffs on an account then stated between them:

Yet the defendant hath disregarded his promises, and hath not paid the said moneys above mentioned, or any of them, or any part thereof.

And the plaintiffs aver, that the two thousand five hundred and seventy-one pounds eighteen shillings and seven pence, sterling money of Great Britain, for which said bill of exchange was accepted, and which was not paid, as above stated, was and is of great value, to wit, of the value of twenty thousand dollars lawful money of the United States, and that the same was due and payable, and that said bill was duly protested for non-payment, and the defendant was duly notified thereof before the commencement of this suit; and that said moneys

remain wholly due and unpaid to plaintiffs, damage twenty thousand dollars; and therefore they bring suit.

PHILLIPS & SEWALL,
Pl'ffs Att'ys.

Pleas.

Defendant pleads non-assumpsit—payment—set off, with leave to introduce special matters.

TAYLOR & HITCHCOCK, *for def't.*

Minutes.

And afterwards, to wit, on the 21st day of April, in the year of our Lord one thousand eight hundred and fifty-three, the same being a day of the term of said court, begun and held in and for said district, at Mobile, on the second Monday in April, one thousand eight hundred and fifty-three, the following order was made, to wit:

Continuance.

A. DENNISTOUN & Co.
vs.
ROGER STEWART. } 3,267.

On motion of the said defendant by his attorney, on cause shown to the court, as on affidavit filed, it is ordered by the court that this cause be continued.

And afterwards, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and fifty-four, being a day of the term of said court, begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-three, the following proceedings were had in this cause, to wit:

Judgment.

A. DENNISTOUN & Co.
vs.
ROGER STEWART. } 3,267.

This day came the parties by their attorneys, and thereupon came a jury of good and lawful men, to wit, Thomas Ellison, R. C. Cunningham, Stephen Quigley, John T. Fontain, Wm. H. Kelly, John Cameron, A. B. Gause, Joseph Krebs, Augustine Demony, B. C. Gallap, John C. Yuille and Sidney E. Collins, who, being duly elected, tried and sworn, well and truly to try the issue joined between the said parties, upon their oaths do say, we, the jury, find for the defendant.

It is, therefore, considered by the court, that the said plaintiffs have nought by their said action, but that the defendant go hence without day, and that he recover of and from the said plaintiffs his costs by him about his defence in this behalf sustained.

Bill of Exceptions.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Circuit court of the United States, fifth judicial circuit and southern district of Alabama—December term, 1853.

Be it remembered, that on the trial of this cause on the sixth day of January, 1854, being a day of said term, before the Hon. John Gayle, judge presiding, the plaintiffs offered to read in evidence to the jury an original bill of exchange, which, with the acceptance and endorsements upon it, is in the words and figures following, to wit:

No. —. £4,417 14*s.* 11*d.* st'g. MOBILE, *Sept.* 9, 1850.

Sixty days after sight of this first of exchange, (second and third unpaid,) pay to the order of ourselves, in London, forty-four hundred and seventeen pounds 14*s.* 11*d.* st'g, value received, and charge the same to account of 1,058 bales cotton per "Windsor Castle."

Your obedient servants,

Pr. pro JAMES REID & CO.
WM. MOULT, jr.

To HY. GORE BOOTH, esq.,
Liverpool.

Acceptance across the face of bill.

Seventh October, 1850. Accepted for two thousand five hundred and seventy-one pounds eighteen shillings and seven pence, being balance unaccepted for acpt. 1,058 bf. cotton, pr. Windsor Castle, payable at Glyn & Co.

Pr. pro HENRY GORE BOOTH,
AND. E. BYRNE.

Due 9 Decem.

Endorsed:

Pay Messrs. A. Dennistoun & Co., or order.

Pr. pro JAMES REID & CO.
WM. MOULT, jr.

and the last endorsements erased as above. (See original.)

The acceptance on the face of said bill of exchange was in red ink, and on the upper margin at the left-hand corner were the figures, in red ink, £2,571 18 7; on the lower margin, left-hand corner, was stamped in red ink, [D. W. & Co., No. 1,526;] and on the right hand corner, [A. D. & Co., No. 5,481,] and between these stamps, on the lower margin, were these letters and figures, to wit: "‡, d, 6‖ J. N. jr. 9 Dec., 1850." There was no proof of any of these initials made or offered, or how they came on said bill, aside from the bill, and the name of the notary being John Newton, junior, on protest.

Plaintiffs also offered to read in evidence a protest, which, with the copy bill endorsed on the back thereof, is in the words and figures following, to wit:

(Copy.)

No. —. £4,417 14*s.* 11*d.* st'g. MOBILE, *Sept.* 9, 1850.

Sixty days after sight of this first of exchange, (second and third unpaid,) pay to the order of ourselves, in London, forty-four hundred and seventeen pounds 14*s.* 11*d.* st'g, value received, and charge the same to account of 1,058 bales cotton, per "Windsor Castle."

Your obedient servants,

Pr. pro JAMES REID & CO.,
WM. MOULT, jr.

To HY. GORE BOOTH, esq., *Liverpool.*

Seventh October, 1850. Accepted for two thousand five hundred and seventy-one pounds eighteen shillings and seven pence, being balance unaccepted for acpt. 1,058 bf. cotton, pr. Windsor Castle, payable at Glyn & Co.

Pr. pro HENRY GORE BOOTH,
Due 9 Decem. CHARLES BYRNE.

Endorsed:

Pay Messrs. A. Dennistoun & Co., or order, pr. pro James Reid & Co.—Wm. Moult, jr.—A. Dennistoun & Co. Pay Messrs. Glyn & Co., bankers, London, pr. pro Liverpool Borough Bank—J. Finney, sub-manager. GLYN & CO.

(Protest.)

J. Newton & Sons, Notaries,
10 Birdien lane, London.

On the ninth day of December, one thousand eight hundred and fifty, at the request of Messrs. Glyn, Halifax, Mills & Co., of London, bankers, I, John Newton, jun'r, notary public, by lawful authority admitted and sworn, dwelling in London, did exhibit the original afore-copied bill of exchange, drawn upon Hy. Gore Booth, esq., of Liverpool, to a clerk in the house of the above named Glyn & Co., of this city, where the same is accepted, payable for part of the amount thereof, and demanded payment of the said bill, to which he answered that they had no orders to pay the bill nor the part for which it was accepted. Wherefore, I, the said notary, at the request aforesaid, did and do, by these presents, protest as well against the drawer and acceptor of the said bill, as all others it doth or may concern, for exchange and re-exchange, costs, damages and interest, suffered and to be suffered, for want of payment of the said bill of exchange.

Thus protested in the presence of—

FRANCIS GOTEBER and
WILLIAM CARTER, Witnesses.

[L. S.] In testimonium veritatis:

JOHN NEWTON, Jr., *Nota. Publ.*

The said protest and copy bill were also impressed with the proper protest stamp of Great Britain.

To the reading of which bill of exchange and protest in evidence the defendant objected, on two grounds:

1. That it did not show a proper presentation; the demand was not of the proper person, at the proper place, or at the proper time.

2. Because the protest did not describe the bill of exchange produced by the plaintiffs, but a different bill, in this, to wit, that the acceptance on said original bill produced by the plaintiffs is "Pr. pro Henry Gore Booth—And. E. Byrne;"

Whereas the acceptance of the bill, described and referred to in the protest, is "Pr. pro Henry Gore Booth—Chas. Byrne."

And the court sustained the second of said objections and excluded the said protest from the jury, to which the plaintiffs excepted.

The plaintiffs then, in order to let in said bill and protest in connection with them, offered to read in evidence testimony to show the identity of said bill of exchange offered by them, with that described on the back of said protest and referred to in it, and protested by said protest, and that there never was any other bill of exchange of a like amount drawn by the defendant in 1850 on Hy. Gore Booth, of Liverpool, against said 1,058 bales of cotton, per Windsor Castle, accepted for a like amount payable at Glyn & Co., London, except this identical bill. The said evidence so offered to be read, being the following, to wit: the depositions of Joseph Bramwell, Robert Barrett, Robert Winthrop, Andrew E. Byrne and Henry Orlando Jones; copies of which are hereto annexed as exhibits. Also a letter from J. Bell & Co., as agents of plaintiffs, to the defendant, bearing date the 15th January, 1851, and the reply from defendant bearing date the 22d January, 1851, copies of which are hereto annexed, marked B and R; to the admission of each and all of which depositions and letters the defendant objected, on two grounds, to wit:

1. That it was incompetent for the plaintiffs to show, by such evidence, that the bill sued on and here produced was the identical bill protested and referred to in and by said protest, and so to let in said protest to the jury.

2. And that the evidence, so offered, did not establish the identity of the said bill with that protested and described in the said protest; and the said objections were sustained by the court, and the said testimony and protest were excluded from the jury. The court ruling that it was incompetent for the plaintiffs, by evidence *aliundo* the bill and protest, to show the identity of the bill offered in evidence with that described in the protest, or to show that the notary had made a mistake in describing said bill in his protest, and that the evidence here offered did not supply the defect in said protest. To the exclusion of all which testimony from the jury and the rulings of the court, the plaintiffs excepted, and the jury were thereupon directed, as there was no evidence before them, to find for the defendant. And the plaintiffs ten-

der these exceptions at the trial, and pray the court to sign and seal this as their bill of exceptions in this case, which is done accordingly during the term of said court, on 16th day of January, eighteen hundred and fifty-four.

JOHN GAYLE, [SEAL.]

Filed in open court. January 19, 1854.

JOHN FITTS, *Clerk.*

Exhibits attached to bill of exceptions.

Interrogatories to be propounded to Mr. Joseph Bramwell, of New York, in a suit commenced in the city court of Mobile county, Alabama, and transferred to, and now pending in, the city court of Mobile, wherein Alexander Dennistoun, John Dennistoun, William Craig Mylne and William Wood, composing the firm of A. Dennistoun & Company, are plaintiffs, and Roger Stewart is defendant, on the part of said plaintiffs.

First interrogatory. Are you acquainted with the parties to the above entitled suit? Under what name and style does Roger Stewart transact business? What is the name of your firm in New York? Have you or your firm ever acted as the agents of James Reid & Co., of Mobile?

Second interrogatory. Do you know of the shipment in 1850 of 1,058 bales of cotton, per "Windsor Castle," by James Reid & Co., of Mobile, to Liverpool, and of the bills drawn against the same? If yea, please, so far as you know and so far as you or your firm had any agency in the matter, to state the whole transaction, and particularly what bills were drawn against it; to whom they were sold; on whom they were drawn; by whom, and what contract or agreement, if any, accompanied them? State the whole transaction fully and particularly.

Third interrogatory. What was the whole amount drawn against the 1,058 bales per Windsor Castle; and what portion of that amount was paid; and what balance on said cargo remained unpaid?

Fourth interrogatory. Was one of the bills of Reid & Co. drawn on account of said cargo for £4,417 11*s.* 11*d.*? If yea, to what amount was this bill accepted, and why for a less amount than its face?

Fifth interrogatory. Were James Reid & Co. informed of the acceptance of £2,571 11*s.* 11*d.* sterling on said bill of £4,417 11*s.* 11*d.*? If yea, how and when, and did they object to it—that is, to such partial acceptance? If so, what objection did they make?

Sixth interrogatory. State whether you or your firm acted in the premises as the agents of James Reid & Co., of Mobile, or not, or for whom you acted.

Seventh interrogatory. If you know any other matter or thing

touching the premises that may benefit the plaintiffs in this suit, please set it forth, fully and particularly, as if specially interrogated thereto.

PHILLIPS & SEWALL,
Atto's for Pl'ffs.

Filed March 10, 1852. R. A. LEWIS, *Cl'k.*

Rec'd 10th March, 1852, and executed on John A. Hitchcock on same day. JAS. F. HUTCHISSON, *Sh'ff U. C.*
By JOHN T. WEBB, *Dept. sh'ff.*

Now pending in the city court of Mobile.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

THE STATE OF ALABAMA,
Mobile county.

On this 13th day of March, 1852, before me, Reuben A. Lewis, personally came Isaac Bell, jr., and being duly sworn, saith: That Joseph Bramwell resides out of the State of Alabama, to wit, in the city of New York; that he believes said Bramwell to be a material witness for the plaintiffs in the above entitled case.

J. BELL, jr.

Subscribed and sworn to before me, the day and year above written.
REUBEN A. LEWIS, *Cl'k.*

City court of Mobile.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

STATE OF ALABAMA, *Mobile county.*

Cross interrogatories to be propounded to Joseph Bramwell, in behalf of the defendant, a witness to be examined on the part of plaintiffs, in the above entitled suit. And said defendant now objects to the examination of said Joseph Bramwell by said plaintiffs, upon the ground that he is incompetent as a witness for plaintiffs, inasmuch as he is interested in the event of the suit.

Cross interrogatory 1st. If you were the agent of James Reid & Co. for the negotiation of the bill or bills spoken of in the direct interrogatories, were you also the agent of the plaintiffs, or of their house in New York?

Cross interrogatory 2d. Under what name or style does the house of Dennistouns do business in New York?

Cross interrogatory 3d. Have you been advised by the Dennistouns' plaintiffs, or either or any of them, by letter or otherwise, what

was the amount of proceeds of 1,058 bales of cotton "per Windsor Castle," mentioned in the direct interrogatories? If yea, state the same fully; and if you were so informed by writing, please attach the writing to your answer to this interrogatory.

Cross interrogatory 4th. When the bill for £4,000 and upwards, specified in the 4th direct interrogatory, was taken by the Dennistouns in New York, were you not required to, or did you not, become responsible in some way for its liquidation?

Cross interrogatory 5th. Did you, or both yourself and the house of Dennistouns, in New York, hear or know, at or before the time when the bill of exchange mentioned in the 4th direct interrogatory was taken by them, that the 1,058 bales of cotton, "per Windsor Castle," had been purchased by James Reid & Co., or defendant, Roger Stewart, solely as agent, upon the order and for account of Henry Gore Booth; and that the bills drawn against said shipment, to which bill of lading for same was attached, were drawn to pay for said cotton, and by the order of Booth?

Cross interrogatory 6th. If you state that you have become liable in any way for the payment of any part of the bill mentioned in the 4th direct interrogatory, state how you became liable, and whether you were liquidated said liability, or whether you have ever been released from the same? If you have liquidated or been released from the same, state how; and when; and where; and by whom; and why.

Cross interrogatory 7th. Would not the Dennistouns have taken the said bills, with the signature of James Reid & Co. thereto attached as drawers, just as soon without having been previously advised of the authority of Reid & Co. to draw, as with such advice?

Cross interrogatory 8th. Please carefully look over your answers to the foregoing direct and cross interrogatories, and specify what you have stated from information, belief or hearsay, and state from whom you get your information; and when; and where; and how.

TAYLOR & HITCHCOCK,
Def'ts Att'ys.

Filed March 13, 1852.

REUBEN A. LEWIS, *Cl'k.*

Commission to take Bramwell's deposition.

THE STATE OF ALABAMA,
Mobile county.

City court of Mobile.

To Charles J. Bushnell, William A. Maxwell, James N. Platt, William S. Kernochan, S. Weir Roosevelt, James W. Wilson and J. P. Girard Foster, esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one

of you, full power and authority to examine Joseph Bramwell on the direct and cross interrogatories hereto annexed, as witness in a cause pending in our court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you, or either one of you, that at such time and place as may suit your convenience, you do cause the said Joseph Bramwell to come before you, or either of you, and then and there examine him on oath, as a witness in the cause aforesaid. And that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said city court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, clerk of our said city court of Mo-
[L. S.] bile, at office, this 16th day of March, in the year of our Lord one thousand eight hundred and fifty-two.

Attest: REUBEN A. LEWIS, *Clerk.*

Bramwell's deposition.

Deposition of Joseph Bramwell, a witness produced, sworn and examined by the undersigned commissioner, by virtue of the annexed commission, issuing out of the city court of Mobile, Mobile county, in the State of Alabama, in a cause therein pending, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant, taken and reduced to writing at sixty-nine Wall street, in the city of New York, on this seventh day of April, eighteen hundred and fifty-two.

Joseph Bramwell, of the city of New York, aged thirty-six years and upwards, being duly sworn says:

1st. To the first direct interrogatory he saith: I am acquainted with the parties to the above entitled suit. Roger Stewart transacts business under the name of "James Reid and Company." The name of my firm in New York is Joseph Bramwell and Company; my firm have acted as the agents of James Reid and Company, of Mobile.

2d. To the second interrogatory he saith: I do know of the shipment in eighteen hundred and fifty of 1,058 bales of cotton per Windsor Castle, by James Reid and Company of Mobile, to Liverpool, and of the bills drawn against the same. The bills drawn against it were one for five thousand pounds, another for five thousand pounds, and a third for four thousand four hundred and seventeen pounds fourteen shillings and eleven pence, drawn by James Reid and Company upon Henry Gore Booth, of Liverpool. Said bills were sold to Messrs. Dennistoun, Wood and Company by my firm, with bills of lading attached for 1,058 bales of cotton.

3d. To the third direct interrogatory he saith: The whole amount drawn against the 1,058 bales per Windsor Castle was fourteen thousand four hundred and seventeen pounds fourteen shillings and eleven pence. I do not know what portion of that amount was paid, nor what balance on said cargo remained unpaid.

4th. To the fourth direct interrogatory he saith: One of the bills of Reid and Company, drawn on account of said cargo, was for four thousand four hundred and seventeen pounds fourteen shillings and eleven pence; this bill was accepted for two thousand five hundred and seventy-one eighteen shillings and seven pence only, from the fact that bills had been previously drawn by Joseph Bramwell and Company, as agents of James Reid and Company, in the absence of their sterling drafts amounting eleven thousand eight hundred and forty-five pounds sixteen shillings and four pence, which sum of two thousand five hundred and seventy-one pounds eighteen shillings and seven pence balanced Reid and Company's invoice of 1,058 bales, reimbursement for which had been taken by them on Joseph Bramwell and Company.

5th. To the fifth direct interrogatory he saith: I cannot recollect whether James Reid and Company were informed of this partial acceptance, or whether they objected to it.

6th. To the sixth direct interrogatory he saith: My firm acted in the premises as the agents of James Reid and Company of Mobile.

7th. To the seventh direct interrogatory he saith: In giving up the bills of lading to the Dennistouns there was no understanding or agreement between us, beyond the usual implied one of collateral security, for the satisfactory acceptance of the bills.

To the cross interrogatories he answers:

1st. To the first cross interrogatory he saith: I was not, nor was my house, the agent of the plaintiffs, or of their house in New York.

2d. To the second cross interrogatory he saith: Dennistoun, Wood and Company.

3d. To the third cross interrogatory he saith: I have not been advised by the Dennistouns, plaintiffs, or either of them, what was the amount of proceeds for 1,058 bales of cotton per Windsor Castle, mentioned in the direct interrogatories.

4th. To the fourth cross interrogatory he saith: Neither my firm nor myself became responsible in any way to the Dennistouns upon the bill for four thousand four hundred and seventeen pounds fourteen shillings and eleven pence, taken by them and referred to in the fourth direct interrogatory.

5th. To the fifth cross interrogatory he saith: Both Dennistoun, Wood and Company and myself knew at the time the said bill of exchange, mentioned in fourth direct interrogatory, were taken by Dennistoun, Wood and Company, that the 1,058 bales of cotton per Windsor Castle had been purchased by James Reid and Company, and that the bills drawn against said shipment were drawn to pay for said cotton.

6th. To the sixth cross interrogatory he saith: I never became liable for the bill of four thousand four hundred and seventeen pounds fourteen shillings and eleven pence, or any part thereof, mentioned in the fourth direct interrogatory.

7th. To the seventh cross interrogatory he saith: I presume Dennistoun, Wood and Company would have taken the said bills with the

signature of James Reid and Company as drawers, just as soon without having been previously advised of the authority of Reid and Company to draw, as with such advice.

8th. To the eighth cross interrogatory he saith: I do not find that I have stated anything in my answers to the direct or cross interrogatories upon information, hearsay or belief.

JOSEPH BRAMWELL.

Sworn and subscribed to this seventh day of April, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Com'rs certificate.

I, J. P. Girard Foster, a commissioner appointed by the city court of Mobile, Mobile county, State of Alabama, by virtue of the annexed commission, do hereby certify that I caused Joseph Bramwell, a witness in the annexed commission named, to come before me at sixty-nine Wall street, in the city of New York, on the seventh day of April, eighteen hundred and fifty-two; that the said Joseph Bramwell was solemnly sworn upon the Holy Evangelist of Almighty God to make full, true, and perfect answers to the interrogatories and cross interrogatories hereto annexed. That the answers of the said witness, numbered so as to correspond with the questions in writing, were correctly taken down by me, and transcribed in my presence by Wm. Henry Byam, and that the testimony so taken down and transcribed was correctly and audibly read over to the said witness, Joseph Bramwell, and by him examined and subscribed.

J. P. GIRARD FOSTER,
Commissioner, &c.

Interrogatories to Joseph Bramwell.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Interrogatories to be propounded to Joseph Bramwell, Robert Barrett and Robert Winthrop, witnesses residing in New York, to be examined on the part and in behalf of plaintiffs.

1. Did you, as agent of defendant, and at what time, sell to Dennistoun, Wood & Co. certain bills of exchange? If yea, describe the transaction.

2. Was the said transaction secured by a bill of lading for cotton? If yea, state when you delivered up the said bill of lading to Dennistoun, Wood & Co., and when the same was delivered up to H. G. Booth.

3. If you know anything else to benefit the plaintiffs, state the same as though particularly interrogated.

Interrogatories to Robert Barrett.

1. Do you act as cashier or clerk for Messrs. Dennistoun, Wood & Co., of New York, and how long have you so been employed?

2. Do you know of the sale of certain bills of exchange made by James Bramwell as agent of Jas. Reid & Co., of Mobile, to Messrs. Dennistoun, Wood & Co.? If yea, state the whole transaction, and if you know, state also when the said Bramwell delivered to the said Dennistoun, Wood & Co. the bill of lading for the cotton upon which the exchange was drawn, and when the same was forwarded to Liverpool and handed over to the drawee of the bills.

3. If you know any thing else that would benefit plaintiffs, state the same as though you were particularly interrogated.

Interrogatories to Robert Winthrop.

1. Do you know the parties to this suit? Are you in the employ of either of them? What is the character of your employment, and how long have you been so engaged?

2. Do you know any thing of a draft drawn by Jas. Reid & Co., Mobile, on H. G. Booth for £4,417 14*s*. 11*d*., accepted for £2,571 18*s*. 7*d*.? If yea, describe the same particularly, and the manner in which it became the property of the plaintiffs.

3. Do you know whether the defendant, as James Reid & Co., received notice of the protest for nonpayment of said bill? If yea, state all the matters connected therewith particularly, and if a notice was received at New York and mailed there for Mobile. Append to your deposition copy of said notice.

4. If you know any thing else to benefit the plaintiffs, state the same as though particularly interrogated.

PHILLIPS & SEWALL,
Pl'ffs att'ys.

Consent in writing endorsed.

We waive affidavit, and consent commission may issue, condition that either party may use it as testimony subject to legal objections.

TAYLOR & HITCHCOCK.

A. DENNISTOUN & Co.
vs.
JAMES REID & Co.

Cross interrogatories on the part of defendant, to be propounded to Joseph Bramwell, Robert Barrett and Robert Winthrop.

The witnesses will please look over again their answers to the direct interrogatories, and if they have through inadvertence stated any thing as of their own knowledge, which they in fact only know from having heard it, they will please correct their answers, so as to be distinct as to the sources of their information. The witnesses will then answer each.

1. If you answer that you negotiated any bills as agent for defendant, you will please give the exact date, if you can, of each transaction connected with the business; when the first batch of bills were drawn and delivered; when the second came on; when delivered; when forwarded; all their dates, and the exact time Dennistoun, Wood & Co. received them. State the exact amount of money received from Dennistoun, Wood & Co., on the shipment and these bills, and when and how each sum was paid. State the whole transaction, accurate and at length, with certainty as to dates, or as near as possible.

2. Were the bills drawn against a shipment of cotton? What number of bales, and by what vessel shipped; to whom consigned?

2. To whose order was the B | L drawn; who received this bill; at what date delivered?

3. Did Dennistoun, Wood & Co. purchase the bills as agents for plaintiffs, or on their own account? Are the two firms connected in business? To whose order were the bills drawn?

4. Were Dennistoun, Wood & Co., or plaintiffs, apprised of the nature of the shipment; at whose instance the cotton was purchased, and that defendant had bought it only as the agent of Booth? Did not you know this, and did not the plaintiffs, or D. W. & Co., get the knowledge through you or otherwise, before the bill of lading was disposed of by them? State what you heard them say.

5. Do you know, or have you heard through the plaintiffs or their agents, whether the proceeds of the cotton would have been sufficient to paid the amount due plaintiffs, for their advances, if sold in time and all the proceeds applied?

6. What really went with the proceeds of this cotton? Did Booth, by his own hands, or did some one else, get it and apply it to secure themselves?

7. Do you know or have you heard of one Byrne as being connected in this transaction; what arrangements were made between him and plaintiffs? Did he not, in fact, pay plaintiffs this bill? Did he receive any of the proceeds of the cotton? Why and what reason did he give for not appropriating it? State what you know or have heard from plaintiffs, and whether Byrne kept any the proceeds, on account of his own claims against Booth?

8. If the witness, R. Winthrop, should say any thing of the rec't of notice of protest on the bill of £4,417 14*s.* 11*d.*, he will please state how it was received in New York. Was it addressed to any one in New York, or enclosed in a letter to any one? If so, state to whom it was addressed and rec'd. Who enclosed or wrote the letter enclosing it; who sent it to Mobile, and to whom was it addressed in Mobile; was it sent to J. Bell? By what conveyance did the notice come from Liverpool? Name the vessel.

9. If you know any other thing that, in your judgment, may benefit the defendant, state it at full length and without reserve.

TAYLOR & HITCHCOCK, *Def'ts att'ys.*

Commission to take the depositions of Bramwell, Barrett and Winthrop.

THE STATE OF ALABAMA,
Mobile county.

City court of Mobile.

To J. P. Girard Foster, Char'es J. Bushnell and William H. Maxwell, esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one of you, full power and authority to examine Joseph Bramwell, Robert Barrett and Robert Winthrop, on the direct and cross interrogatories hereto annexed, as witnesses in a cause pending in our said court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you, or either one of you, that at such time and place, or times and places, as may suit your convenience, you do cause the said Joseph Bramwell, Robert Barrett and Robert Winthrop, to come before you, or either of you, and then and there examine them on oath, as witnesses in the cause aforesaid; and that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said city court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, clerk of our said city court of Mobile, at office, this second day of September, in the year of our Lord one thousand eight hundred and fifty-two.

Attest: REUBEN A. LEWIS, *Clerk.*

Depositions of Joseph Bramwell, Robert Barrett and Robert Winthrop, witnesses produced, sworn and examined by the undersigned commissioner, by virtue of the annexed commission, issuing out of the city court of Mobile, Mobile county, in the State of Alabama, in a cause therein pending, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant, taken and reduced to writing at sixty-nine Wall street, in the city of New York, on the day of September, eighteen hundred and fifty-two.

Joseph Bramwell, of the city of New York, aged thirty-six years and upwards, being duly sworn, says:

1. To the first direct interrogatory he saith: My firm, as agents of James Reid & Co., of Mobile, sold to Dennistoun, Wood & Co., on the 20th of August, 1850, bills of exchange against a shipment of 1,058 bales of cotton, per Windsor Castle, by James Reid & Co., of Mobile, to Henry Gore Booth, of Liverpool. James Reid & Co. drew on us against said shipment, as follows:

$23,831	66	presented	for	acceptance	2d	September.
5,000	00	"	"	"	4th	"
4,000	00	"	"	"	5th	"
9,459	32	"	"	"	5th	"
2,248	15	"	"	"	5th	"

$44,539 13, equivalent to £9,162 6*s.* sterling, which amount, in the absence of their own sterling bills, which ought to have accompanied same, we drew in their name or as their agents, upon Henry Gore Booth, of Liverpool, and delivered same on the 10th September, 1850, to Dennistoun, Wood & Co., accompanied with bills of lading for said 1,058 bales cotton, per Windsor Castle.

There further appeared, on 11th September, drafts as follows:

$5,000
5,000
2,000
1,000

$13,000, equivalent to £2,683 9*s.* 8*d.* sterling; which, again being unaccompanied by their sterling drafts, we drew as before, and delivered same to Dennistoun, Wood & Co., on 17th September.

These were followed, on the 18th September, by the further amount of $12,047 $\frac{11}{100}$, making the aggregate $69,587; and, by the same mail, this was covered by their sterling drafts, as follows:

$5,000
5,000
4,417 14 11

14,417 14 11

Which drafts were delivered on 24th September, to Messrs. Dennistoun, Wood & Co., to replace and cancel those previously drawn by us, as herein stated, say for £11,845 16*s.* 4*d.*

This balance, £2,571 18*s.* 7*d.*, being unlooked for either by Dennistoun, Wood & Co. or by my firm, was taken with much hesitation by them, and was so expressed to James Reid & Co., in letter and by telegraph to them of 18th September, as follows, in the following extract:

"(We have thus telegraphed you to-day.) Always send invoice amount with bill of lading, the last two bills being unlooked for, and disappointing the buyers.

"We request you will be very particular in attending to this in future; Dennistoun, Wood & Co. having sent on the bills of lading with the first batch of bills, amounting to a little over £9,000, without being advised to inform their house others were coming on."

2d. To the second direct interrogatory he saith: As I have already stated, the transaction was secured by bills of lading of 1,058 bales of

cotton, which I delivered up to Dennistoun, Wood & Co., with the first set of bills drawn by me as agent of James Reid & Co.

I do not know when the same was delivered up to Henry Gore Booth.

3d. To the third direct interrogatory he saith: I know nothing further to benefit the plaintiff in this suit.

1. To the first cross interrogatory he saith: In my answer to the first direct interrogatory I have already stated fully the dates with reference to the entire transaction, as far as I know. I do not know the dates of the bills or the exact date when forwarded. The amount of money received from Dennistoun, Wood & Co. was $70,098 69, equivalent to £14,417 14*s.* 11*d.* sterling, and paid to *Etise* the dollar drafts drawn on me by James Reid & Co., as mentioned in my answer to the first direct interrogatory.

2d. To the second cross interrogatory he saith, the bills were drawn against 1,058 bales of cotton per Windsor Castle, consigned to Henry Gore Booth. The bill of lading was drawn, I believe, to order. Bills of lading were delivered to Dennistoun, Wood & Co. about 10th September, 1850.

3d. To the third cross interrogatory he saith: I do not know on whose account Dennistoun, Wood & Co. purchased the bills, or the connection of their firm with plaintiffs. The bills were drawn in favor of James Reid & Co.

4th. To the fourth cross interrogatory he saith: In effecting the negotiation with Dennistoun, Wood & Co., I stated that the cotton was purchased by James Reid & Co. on order, for account of Henry Gore Booth.

5th. To the fifth cross interrogatory he saith: I do not know and have not heard from the plaintiffs, or their agents, any thing in answer to this question.

6th. To the sixth cross interrogatory he saith: I have no personal knowledge how those proceeds were appropriated.

7th. To the seventh cross interrogatory he saith: I am not personally cognisant of the arrangements made between Byrne and plaintiffs, but I have heard it stated that the plaintiffs exacted from Byrne a verbal promise that in the event of further drafts appearing against the bill of lading which was to be given up to him, he would, as agent of Henry Gore Booth, accept the same, and apply the proceeds of the cotton towards their payment; that he afterwards did so accept the balance bill, but failed to apply the proceeds, as promised, to A. Dennistoun, the plaintiffs.

JOSEPH BRAMWELL.

Subscribed and sworn to before me, this 23d September, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Barrett's deposition.

Robert Barrett, of the city of New York, aged twenty-eight years and upwards, being duly sworn says:

1st. To the first direct interrogatory he saith: I have been cashier of Dennistoun, Wood & Co., of New York, for three years.

2d. To the second direct interrogatory he saith, about the 9th September, 1850, J. Bramwell applied to us to negotiate sterling bills for the cost of 1,058 bales of cotton per Windsor Castle. The shippers of cotton in Mobile had neglected to send on the sterling bills, and we, Dennistoun, Wood & Co., took Bramwell's bills drawn as agent of James Reid & Co., of Mobile, for about £9,100, by steamer of 11th September, and a week after about £2,600 more, which I and Dennistoun, Wood & Co. thought was all that was to be drawn against the shipment. Bramwell's bills were to be replaced by the Sterling bills when they came on. Bramwell delivered Dennistoun, Wood & Co. the bills of lading for the cotton about the 9th September, and they were sent to the plaintiffs about the 11th.

The mail after we had sent the last bill from Bramwell, the Sterling bills drawn by Reid & Co. came on, which proved to be some £2,571 more than the amount we had already negotiated for Bramwell. We paid for the excess and sent the bill over to plaintiffs. For this excess £2,571 1*s.* 7*d.*, Booth's acceptance was taken on one of James Reid & Co.'s bills for £4,417 18*s.* 1*d.* I do not know when they were handed to the drawer of the bills, but I have heard that shortly after their arrival in Liverpool the bills drawn by Bramwell, as agent, were discounted and the bills of lading given up.

3d. To the third direct interrogatory he saith: I do not know any thing further.

1st. To the first cross interrogatory he saith: I did not negotiate these bills, and therefore cannot answer this question.

2d. To the second cross interrogatory he saith: The bills were drawn against a shipment of 1,058 bales of cotton per Windsor Castle, consigned to order. Bills of lading were drawn to order received by Dennistoun, Wood & Co. about 9th September, 1850.

3d. To the third cross interrogatory he saith: Dennistoun, Wood & Co. purchased the bills in the ordinary course of business, to remit to plaintiffs. The firms are connected in business. The bills of lading were to the order of the drawers.

4th. To the fourth cross interrogatory he saith: I do not know.

5th. To the fifth cross interrogatory he saith: I do not know.

6th. To the sixth cross interrogatory he saith: I do not know.

7th. To the seventh cross interrogatory he saith: I only knew that Byrne was the agent of Booth.

ROBERT BARRETT.

Subscribed and sworn to before me, this 23d September, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Winthrop's deposition.

Robert Winthrop, of the city of New York, aged nineteen years and upwards, being duly sworn says:

1st. To the first direct interrogatory he saith: I know the plaintiffs, and have been a clerk with Dennistoun, Wood & Co. for four years; for the last four months as bookkeeper; before that as shipping clerk.

2d. To the second direct interrogatory he saith: I know that the plaintiffs held a draft drawn by James Reid & Co., of Mobile, on H. G. Booth, for £4,417 14*s.* 11*d.*, accepted for £2,571 18*s.* 7*d.*, from having advised them of the transaction from the journal of Dennistoun, Wood & Co.

3d. To the third direct interrogatory he saith: I know that the original of a notice, of which I append a copy marked A, (exhibit A hereto annexed,) was received in New York by Messrs. Dennistoun, Wood & Co. by the steamer Baltic on the 1st January, 1851. I mailed the original notice so received on the 1st January, 1851, addressed to James Reid & Co., Mobile.

4th. To the fourth direct interrogatory he saith: I know nothing else to benefit the plaintiffs.

1. To the first cross interrogatory he saith: I did not negotiate any bills, as agent, and therefore have no answer to this cross interrogatory.

2d. To the second cross interrogatory he saith: I do not know any thing of my own knowledge.

3d. To the third cross interrogatory he saith: I know from the correspondence that Dennistoun, Wood & Co. purchased these bills in the regular course of business, to remit to plaintiffs. The firms are connected so far as certain members are partners in both firms. I do not know to whose order the bills were drawn.

4th. To the fourth cross interrogatory he saith: I know nothing in answer to this question.

5th. To the fifth cross interrogatory he saith: I do not know.

6th. To the sixth cross interrogatory he saith: I do not know.

7th. To the seventh cross interrogatory he saith: I have heard that A. E. Byrne & Co. were the agents of Henry Gore Booth, and that they discounted the bills drawn by Bramwell, as agent, but did not pay the £2,571 18*s.* 7*d.*, acceptance of H. G. Booth of James Reid & Co., on which this suit is brought. I know nothing further.

ROBERT WINTHROP.

8th. To the eighth cross interrogatory he saith: The notice of protest, a copy of which is hereto annexed, was received by the mail steamer Baltic in New York by Dennistoun, Wood & Co., on 1st January, 1851, enclosed in a letter addressed to Dennistoun, Wood & Co., written by A. Dennistoun & Co., the plaintiffs. I sent the notice of protest, as clerk of Dennistoun, Wood & Co., by mail on 1st January, 1851, to Mobile, addressed to James Reid & Co., Mobile. It was not sent to Isaac Bell.

9th. To the ninth cross interrogatory he saith: I know nothing that may benefit the defendant.

ROBERT WINTHROP.

Subscribed and sworn to before me, this 23d day of September, 1852.

J. P. GIRARD FOSTER,
Commissioner.

Notice of protest.

Exhibit A—Notice of protest referred to in Winthrop's deposition.

Pr. Baltic. LIVERPOOL, 13 *Dec'r*, 1850.

Messrs. JAMES REID & Co., Mobile.

GENTLEMEN: We regret we have to advise you that your d'ft on H. G. Booth for £4,417 14*s*. 11*d*., accepted for £2,571 18*s*. 7*d*., (being the amount due, the balance of the amount having been accepted for in drafts of J. Bramwell & Co., "your agents,") was protested at maturity for nonpayment on 9th instant, and we look to you for payment of the same and expenses

We are, gentlemen, yours respectfully,

Signed A. DENNISTOUN & CO.

Original of above mailed by me this day, (1st January, 1851.)

ROBERT WINTHROP.

Commissioner's Certificate.

I, J. P. Girard Foster, a commissioner appointed by the city court of Mobile, Mobile county, State of Alabama, by virtue of the annexed commission, do hereby certify that I caused Joseph Bramwell, Robert Barrett, and Robert Winthrop, the three witnesses named in the annexed commission, to come before me at sixty-nine Wall street, in the city of New York, on the twenty-third day of September, eighteen hundred and fifty-two. That the said Joseph Bramwell, Robert Barrett, and Robert Winthrop, were by me severally duly sworn upon the Holy Evangelists of Almighty God to make full, true, and perfect answers to the interrogatories and cross interrogatories hereto annexed. That the answers of the said witnesses, numbered so as to correspond with the questions in writing, were correctly taken down by me and transcribed in my presence by William Henry Byam, and that the testimony so taken down and transcribed was correctly and audibly read over to the said witnesses, Joseph Bramwell, Robert Barrett, and Robert Winthrop, and by them severally examined, subscribed, and sworn to in my presence. That the paper hereunto annexed, marked A, is the notice of protest mentioned and referred to in the deposition of Robert Winthrop.

J. P. GIRARD FOSTER, *Commissioner.*

Interrogatories to Henry Orlando Jones.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Interrogatories to be propounded to Henry Orlando Jones, a witness residing in Liverpool, for and on behalf of the plaintiffs.

Interrogatory first. Have you any connection with the business of the plaintiffs? If yea, state the same and the length of time it has existed.

Interrogatory second. Have you any knowledge of a shipment of cotton made to Liverpool in the year , by the defendant, as James Reid & Co., which cotton was forwarded by the ship "Windsor Castle?" Did you have in your possession, at any time, the bill of lading for said shipment? If yea, describe the same.

Interrogatory third. If you had in your possession said bill of lading, state how it came into your possession. Was it or was it not attached to sterling bills; and if so, describe the said bills, and give us the date when you received said bill of lading and said sterling bills.

Interrogatory fourth. What became of said bill of lading and sterling bills? Were the sterling bills ever presented for acceptance; if yea, to whom? Were they accepted; if yea, by whom? If any name other than that of the drawer appears upon the acceptance, state under what circumstances.

Interrogatory fifth. Were the sterling bills ever paid; if yea, by whom, under what circumstances, on what date? Was the bill of lading delivered up at that time, and as a part or condition of the payment of said payment, or was it returned after that time?

Interrogatory sixth. At the time the bill of lading was delivered up, had the plaintiffs any knowledge of the existence of any other sterling bills drawn upon same shipment of cotton, or any knowledge of any intention to draw such bills? State the means you have of answering this question understandingly.

Interrogatory seventh. At the time you delivered up the sterling bills aforesaid, was there any understanding or agreement with the acceptor as to other bills. With whom was this made; if by yourself, state under whose direction or order did you act, and what was the object or motive of it.

Interrogatory eighth. Do you know any thing of a sterling bill drawn by defendant on Henry Gore Booth for £4,417 14*s.* 11*d.*, due 9th December, 1851? If yea, state when the said plaintiffs first knew of its existence, and when it came into their possession. State also to whom it was presented, who accepted it, for what amount it was accepted, and if accepted for less than the amount of its face, the reason of this partial acceptance.

Interrogatory ninth. If you say this bill was accepted, state who wrote the acceptance; and if not written by Booth himself, state by whom and under what authority.

Interrogatory tenth. Was this bill protested at maturity? If yea, state whether the Baltic was not the first steamer which left Liverpool after said protest for the States, and whether notice was forwarded by her to Messrs. Dennistoun, Wood & Co., of New York, of the non-payment of said bill.

Interrogatory eleventh. If you know any thing else to benefit the plaintiffs, state the same as though particularly interrogated.

P. PHILLIPS,
Sol'rs plff's.

Objections and cross interrogatories for defendant.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Defendant objects to each interrogatoryof plaintiffs as irrelevant and leading.

Have you any interest in the event of this suit? Are you a partner, or have any interest in the plaintiffs' firm, or the firm of Dennistoun, Wood & Co., of New York.

Int. first. To whom did you give up the bill of lading? Was it not delivered to one A. E. Byrne; was it endorsed by you to him?

Second. Do you not know that Byrne retained the proceeds, or a part thereof, to cover himself from loss on Booth's account, arising out of other matters?

Third. Did not the plaintiffs know that Booth was the purchaser of the cotton, and that defendant had only acted as agent in the purchase?

Fourth. Was not Booth, at the time you gave up the bill of lading, considered by the plaintiff in rather doubtful credit? Had he any visible wealth? Did he own property, and what? Was he engaged in any permanent, established business at the time, or was he a mere speculator?

Fifth. Do you know whether Byrne promised plaintiffs that if they would give up to him the bill of lading, that he would see that the proceeds were applied to the payment of the bills drawn on the shipment. State what you do know of any promise of the character alluded to.

Sixth. At the time plaintiffs gave up the bill of lading, did he not suspect that there would be other bills, drawn on said shipment, come on for payment? Was Byrne good?

Seventh. Were the drafts that were sent on with the bill of lading accepted and returned to plaintiffs? How long afterwards before they were paid; and were they paid before they were due? When were they due?

Eighth. Where was Booth during the time all this was going on? Did the plaintiffs have any intercourse with him personally?

Ninth. What day in the month of December, 1850, did the steamship "City of Glascow" leave Liverpool for Philadelphia? State any thing else you may know that may benefit the defendant on the trial of this suit.

TAYLOR & HITCHCOCK, *Def'ts att'ys.*

Affidavit waived, and consent that commission may issue, March 15,–'53. T. & H., *Def'ts att'ys.*

Commission to take Henry Orlando Jones's deposition.

THE STATE OF ALABAMA, *Mobile county.*

City court of Mobile, to John Whitley, Robert Higgin, and Thomas Joynson, esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one of you,

full power and authority to examine Henry Orlando Jones on the direct and cross interrogatories hereto annexed, as witness in a cause pending in our said court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you or either one of you, that at such time and place, or times and places, as may suit your convenience, you do cause the said Henry Orlando Jones to come before you, or either of you, and then and there examine him on oath as witness in the cause aforesaid. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said city court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, clerk of our said city court of Mobile, at office, this fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

Attest: REUBEN A. LEWIS, *Clerk.*

THE STATE OF ALABAMA, *Mobile county.*

A. DENNISTOUN & Co.
vs.
ROGER STEWART. } City court.

The examination of Henry Orlando Jones, a witness produced, sworn, and examined on behalf of the plaintiffs, under and by virtue of a commission issued by this court, on the fifteenth day of March, 1853, at the office of Messrs. Duncan, Squarey & Duncan, No. 2 Exchange street, West Liverpool, before Robert Higgin, esquire, on the tenth day of May, 1853. The said Robert Higgin appointed John Price, the clerk to the commission, and, before proceeding to the execution of the commission, administered to him the oath of faithful administration.

Henry Orlando Jones's deposition.

The said Henry Orlando Jones, of Liverpool, in the county of Lancaster, bookkeeper, having been duly sworn, and being examined on the interrogatories annexed to the said commission, made the following answers thereto:

1st. To the first interrogatory: I have been a clerk in the office of Messrs. A. Dennistoun & Co., Liverpool, the plaintiffs, for upwards of twenty years; the last twelve of which I have been cash keeper.

2d. To the second interrogatory: I remember the shipment of cotton of 1,058 bales per Windsor Castle, shipped by James Reid & Co., of Mobile, in 1850, referred to in this interrogatory. I received the bill of lading thereof on the 23d September, 1850, attached to five bills drawn by J. Bramwell & Co., as agents for James Reid & Co., on Henry Gore Booth, amounting together to £9,162 6 8. The bill of lading was dated Mobile, 24th August, 1850; was signed by Charles C. Sampson, as master of the Windsor Castle, which was stated to be

then in the port of Mobile, and bound for Liverpool; the marks and numbers of the same 1,058 bales were in the margin, as follows:

H	×	E	1 | 57	57
G	×	O	1 | 287	287
E	×	S	1 | 337	337
O	×	N	1 | 274	274
A	×	D	1 | 103	103

And the said cotton was made deliverable to order on payment of freight at $\frac{3}{8}$ths of a penny sterling per pound weight, delivered with primage and average accustomed, and the same were endorsed in blank "P. pro James Reid & Co., William Moult, jr."

3d. To the third interrogatory: The bill of lading came into my possession as cash keeper of A. Dennistoun & Co., it having been handed to me on receipt thereof, together with the five referred to in my last answer by Mr. William Craig Mylne, one of the partners in the plaintiffs' house. It was attached to the said five bills, the particulars whereof are as follows, all drawn by Joseph Bramwell & Co., therein described as agents for James Reid & Co., Mobile, upon Henry Gore Booth, esquire, Liverpool, payable to the order of Messrs. Alexander Dennistoun & Co., dated New York, 9th September, 1850, payable sixty days after sight, for value received, the same to be charged to account of 1,058 bales cotton per Windsor Castle, as advised; and the said bills were drawn in three parts, and one of the said bills was for £2,162 6 8, another for £2,000, another for £2,000, another for £1,500, and another for £1,500. The date at which I received the said bills of lading and sterling bills was on the twenty-third day of September, 1850, on which day the same reached the hands of the said A. Dennistoun & Co.

4th. To the fourth interrogatory: I presented the said five bills for acceptance on the said twenty-third day of September, at the office of A. E. Byrne & Co., Liverpool, where the business of the said Henry Gore Booth was transacted, and they were accepted, I believe, by A. E. Byrne, per procuration for H. G. Booth; but I am not certain as to this, as some of the bills were accepted by Mr. Booth himself—they were accepted either by him or Mr. Byrne as his agent. At that time I retained the bill of lading until the said bills were paid to which it was attached; whereupon it was given up to Mr. Byrne as agent for Mr. Booth. It was so delivered up on the 26th September, 1850, upon Mr. Byrne's paying the said bills.

5th. To the fifth interrogatory: The said sterling bills were paid by A. E. Byrne upon the twenty-eighth September, 1850, under discount. The bill of lading was at the same time delivered up to him on condition of the said payment of the said five bills.

6th. To the sixth interrogatory: At the time the bill of lading was delivered up, the plaintiffs had no knowledge of any other sterling bills drawn upon the same shipment of cotton, or any knowledge of any intention to draw such bills. From my position as cash keeper

and confidential clerk of the plaintiffs, all the correspondence of the house and books are open to me, and it is my duty to inspect them daily, and to make entries therefrom. All bills of exchange with bills of lading attached, and all bills of exchange without any bill of lading attached, are deposited with me immediately on receipt, and in particular all advices or relating to bills drawn, or to be drawn, or to be sent forward against any shipments, are seen by me immediately on receipt, it being part of my duty to attend to the business arising thereout.

7th. To the seventh interrogatory: At the time I delivered up the sterling bills aforesaid, there was an understanding or agreement verbally made with Mr. Byrne as agent for Mr. Booth, that he should pay any other bills that might appear against the said shipment. It was made by myself with Mr. Byrne, on delivering up the bill of lading. I did not act under any special direction or order, but I did it without consulting any one; because, although the plaintiffs had no advice or knowledge of any bills beyond those already referred to, I thought it possible that others might afterwards appear against the said shipment.

8th. To the eighth interrogatory: I do know of a sterling bill drawn by the defendant under his firm of James Reid & Co. on Henry Gore Booth, for £4,417 14 11, due ninth December, 1850. The plaintiffs first knew of its existence on the seventh of October, 1850, but the plaintiffs had previously, viz., on the thirtieth September, 1850, received advices of other bills in addition to those amounting to £9,162 6*s.* 8*d.*, on H. G. Booth, drawn by J. Bramwell & Co., as agents for James Reid & Co., for £2,683 9 8, making, together with the previous bills, £11,845 16 4, all against the said cotton, which they were advised were so drawn in New York in consequence of the Mobile bills not having come on, but these latter were to be remitted to the plaintiffs for the purpose of being substituted for those drawn in New York.

The plaintiffs, therefore, knew on the thirtieth September, 1850, but not before, that certain Mobile would be sent forward, and this one for £4,417 14 11 afterwards came forward on the seventh of October, 1850, as one of such Mobile bills so referred to. The bill for £4,417 14 11 came into possession of the plaintiffs on the seventh October, 1850, when it was presented as usual at the office of A. E. Byrne, as the agent for Mr. Booth, and it was accepted either by him as such agent, or by H. G. Booth himself, for £2,571 18 7, only that being the balance of the cost of the said 1,058 bales cotton. The reason of this partial acceptance was, that the plaintiffs had already received payment of the bills drawn against the cotton, for £9,162 6 8, and held other like bills accepted by Booth, for £2,683 9 8, which were paid on the twenty-first October, 1850, and the plaintiffs were therefore not entitled to an acceptance for more than the balance of the cost of the cotton, namely, £2,571 18 7, making in all, £14,417 14*s.* 11*d.*

9th. To the ninth interrogatory: The bill for £4,417 14 11, was accepted for £2,571 18 7, on the 7th of October, 1850, by A. E. Byrne, as agent for H. G. Booth, per procuration, and was, I believe,

in the handwriting of A. E. Byrne, by authority from Mr. Booth, as he acted as his agent throughout.

10th. To the tenth interrogatory: The said bill was protested for nonpayment at maturity, and the protest thereof was forwarded by the Baltic to Dennistoun, Wood & Co., New York, and notice thereof was also forwarded by the Baltic to James Reid & Co., Mobile. The Baltic was the first mail steamer that left Liverpool for the United States after the said protest, and she sailed, I believe, on the 14th December, 1850.

11th. To the eleventh interrogatory: I am not aware of any thing else to benefit the plaintiffs, unless it be that a letter of thirtieth November, 1850, sent by Mr. Mylne to Mr. Byrne in the name of the plaintiffs' firm, was written under misapprehension, on the part of Mr. Mylne, of what had passed between Mr. Byrne and myself.

The understanding or agreement entered into by Mr. Byrne was so entered into as agent of Mr. Booth. On the same day, the thirtieth November, the letter now produced and marked A, was received by the plaintiffs from Mr. Byrne.

1st. To the first cross interrogatory: I have no interest in the event of this suit; I am not a partner, and have no interest in the plaintiffs or the firm of Dennistoun, Wood & Co., New York. I gave up the bill of lading to Andrew E. Byrne, as agent for H. G. Booth; it was not endorsed by me to him; it had been previously endorsed in blank by the shippers.

2d. To the second cross interrogatory: I do not know.

3d. To the third cross interrogatory: I do not know that the plaintiffs knew the matters inquired into in this interrogatory; I did not myself know the fact, and I believe that the plaintiffs did not know.

4th. To the fourth cross interrogatory: I do not believe that the plaintiffs considered that Booth, at the time referred to, in doubtful credit; I did not myself believe it; I do not know as to his property, but he was considered to have made money, and he was engaged in business only, I believe, as a speculator, and that occasionally.

5th. To the fifth cross interrogatory: No such promise was made as a condition for the giving up of the bill of lading, nor do I know of any promise, other than the understanding or agreement referred to in my answer to the seventh interrogatory in chief.

6th. To the sixth cross interrogatory: I do not know what the plaintiffs may have suspected, but I myself thought it probable that other bills drawn on said shipment might come on for payment, although the plaintiffs had no advice or knowledge of any such bills at the time they gave up the bill of lading, beyond the said bills for £9,162 6*s*. 8*d*.; other bills to the amount of £2,683 9*s*. 8*d*., and afterwards come forward on the 30th September, 1850, as already stated, and were ultimately paid by Byrne, as agent for Booth. Byrne was considered in fair credit and quite respectable.

7th. To the seventh cross interrogatory: The drafts that were sent on with the bill of lading were accepted on the 25th of September,

and returned to the plaintiffs on the following day, and were paid on the 26th September, 1850; they were not due till the 25th November, 1850.

8th. To the eighth cross interrogatory: I saw Mr. Booth during part of the time; I do not know whether the plaintiffs had or had not any intercourse with him personally.

9th. To the ninth cross interrogatory: The steamship City of Glasgow left Liverpool for Philadelphia on or about the eleventh December, 1850; she appears to have cleared out on the eleventh; she is a screw steamer, and was not a mail steamer. Where a mail steamer is sailing within a few days, it is not usual to send letter of any importance by a screw steamer. I do not know of any thing else to the benefit of the defendant on the trial of this suit.

HENRY ORLANDO JONES.

Taken, signed and sworn, this tenth day of May, 1853, by virtue of the commission hereunto annexed.

ROBERT HIGGIN.

I hereby certify that the witness, Henry Orlando Jones, has been credibly introduced to me, and has been proved to my satisfaction to be the person of that name referred to in the commission, as a witness to be examined before me.

ROBERT HIGGIN.

Exhibit A, referred to in 11th answer to interrogatories in chief.

Letter from A. E. Byrne to A. Dennistoun & Co.

Messrs. A. Dennistoun & Co.,
Liverpool.

Dear Sirs: In reply to your letter respecting an acceptance of Mr. Henry Gore Booth for £2,571 18*s.* 7*d.*, I beg leave to say, that my impressions regarding it are not in keeping with yours, and that I do not consider myself in any way bound for its payment.

Yours, respectfully, AND. E. BYRNE.

Beauford Place, 30*th Novem.*, 1850.

This is the letter mentioned to be marked A, and referred to by Henry Orlando Jones, in his answer to the eleventh interrogatory in chief, taken before me, this 10th day of May, 1853.

ROBERT HIGGIN.

Interrogatories to be propounded to Andrew E. Byrne, a witness to be examined in behalf of the plaintiffs.

A. Dennistoun & Co.
vs.
Roger Stewart.

Interrogatory first. Do you know any thing of a shipment of cotton per Windsor Castle, say 1,058 bales, forwarded by the defendant and

consigned to Henry Gore Booth? If yea, state whether you ever came into the possession of the bill of lading of said cotton; and if so, describe the circumstances, when, and from whom.

Interrogatory second. Were you acting, in thus receiving the said shipment, upon your own account or for another? If the latter, state for whom you acted, in what capacity, and the extent of your authority.

Interrogatory third. If you state the time you received the bill of lading, and that it was accompanied with sterling bills, say whether you know any fact which would tend to show that the plaintiffs knew of any other sterling bills which were drawn, or intended to be drawn, upon this shipment.

Interrogatory fourth. Do you know any thing of a sterling bill drawn by defendant upon Henry Gore Booth, of £4,417 14*s.* 11*d.*, due 9th December, 1851? If yea, state who accepted the same, and for what amount.

Interrogatory fifth. In receiving the bill of lading, and the shipment it represented, and in making the acceptances, state whether you acted in your individual right, or as a mere agent.

Interrogatory sixth. On whose account was this shipment made? If you say it was for Mr. Booth's, state whether said Booth did not receive all of said shipment and enjoyed the full benefit of its proceeds.

Interrogatory seventh. Why was not the said bill paid at maturity? If it was owing to the failure or bankruptcy of any of the parties, state when the same occurred.

Interrogatory eighth. If you answer that the shipment was made exclusively upon the account of Booth, and the defendant acted only as agent in the purchase, state what was the extent of that interest, as to the amount of compensation, commissions, &c.

Interrogatory ninth. When the first sterling bills were presented, did you pay the same; and did or did you not demand the surrender of the said bill of lading as a condition; would you have paid the bills and permitted the party to retain the bill of lading?

Interrogatory tenth. If you know any thing to benefit the plaintiffs, state the same as if particularly interrogated.

P. PHILLIPS, *Sol for pl'ffs.*

Filed February 26, 1853.

REUBEN A. LEWIS, *Cl'k.*

Defendant's objections and cross interrogatories to Andrew E. Byrne, witness for plaintiffs.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

1. The defendant objects to the witness, on the ground that he is interested, and propounds the following cross interrogatories, to be used

in case his objections are overruled and the deposition permitted to go to the jury.

Interrogatory first. Who compose the firm of A. E. Byrne & Co.?

Second. Was A. E. Byrne & Co. the agent of Booth in the transaction alluded to, or do you say that you, *individually*, was his agent? If you acted under any written power or authority, say so, and attach a copy to your answer.

Third. Where did Booth reside, and what was his occupation? Was he located or established in any particular business, or was he a general speculator; had he much or any visible property, real or personal?

Fourth. Were the 1,058 bales of cotton sold by you, and did you receive the proceeds; for what amount did the 1,058 bales sell for; did it sell for enough; or, if it had been sold to meet the bills drawn on it, would it not have produced enough to pay the whole amount accepted for by Booth?

Fifth. If you answer in the direct interrogatories that Booth received the benefit of the proceeds, do, if you please, state in what way he enjoyed this benefit? Did he get personally the cotton, or did he receive in his own hands one cent of the proceeds? If so, state how much and when. Or if you state his debts were paid with it, then state to whom these debts were paid, when they accrued, and how they originated.

Sixth. Was Booth indebted to you or your firm, and did you apply any of the proceeds of the cotton to this indebtedness; how much over and above the amounts you paid on the drafts?

Seventh. Were not the bills accepted and returned to Dennistouns, immediately on presentation; and did they not then hold both bills and bill of lading; and did you not afterwards cash the bills, say about £9,000, on their giving you up the bill of lading? Did Booth cash these bills before due, with his own money; or did you or your firm cash them? If you undertake to say that Booth paid the money, please state if you can from whom he got it; what security was given by him for it. Please state the day you paid the drafts, and the bills of lading were delivered to you. Was any assignment written on the B|L by Dennistouns at the time it was handed over to you? If so, add a copy of it to your answer.

Eighth. Did not the plaintiffs expect other bills to come, drawn on the shipment, at the time they delivered to you the bill of lading? Did they, or some one of them, speak of the probability of other bills coming on?

Ninth. What kind of business does your firm; is it your business to sell cotton, or buy bills of exchange?

Tenth. Is there any fixed custom among the merchants of Liverpool as to the mode of paying for cotton bought in the United States; is money or cash ever sent on? Is the purchase-money always drawn for by sterling bills on the purchaser?

Eleventh. Were the first batch of bills paid before their maturity?

Twelfth. Do you know any fact that, in your judgment, might ben-

efit the defendant on this trial? If yea, state it fully, and answer this on your oath.

TAYLOR & HITCHCOCK,
Defendant's attorneys.

Filed Feb'y 26, 1853.

REUBEN A. LEWIS, *Clerk.*

Commission to take the Deposition of A. E. Byrne.

THE STATE OF ALABAMA, *Mobile county.*

City Court of Mobile, to John Whitley, Robert Higgins, and Thomas Joynson, esqs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or either one of you, full power and authority to examine Andrew E. Byrne on the direct and cross interrogatories hereto annexed, as witness in a cause pending in our said court, wherein A. Dennistoun & Co. are plaintiffs, and Roger Stewart is defendant. And therefore we command you, or either one of you, that at such time and place, or times and places, as may suit your convenience, you do cause the said Andrew E. Byrne to come before you, or either of you, and then and there examine him on oath as witness in the cause aforesaid. And that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said city court of Mobile, with all convenient speed.

Witness Reuben A. Lewis, clerk of our said city court of Mobile, at office, this 22d day of March, in the year of our Lord one thousand eight hundred and fifty-three.

Attest, REUBEN A. LEWIS, *Clerk.*

THE STATE OF ALABAMA,
City court, Mobile county.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

The examination of Andrew E. Byrne, a witness produced, sworn, and examined on behalf of the plaintiffs, under and by virtue of an order or commission issued by this court on the twenty-second day of March, 1853, taken at the office of Messrs. Duncan, Squarey & Duncan, No. 2 Exchange street, West Liverpool, before Robert Higgin, esq., on the sixth day of May, 1853. The said Robert Higgin appointed John Price the clerk to the commission, and, before proceeding to the execution of the commission, administered to him the oath of faithful administration.

The said Andrew E. Byrne, of Liverpool, in the county of Lancaster, merchant, having been duly sworn, and being examined on the interrogatories annexed to the said commission, made the following answers thereto.

1st. To the first interrogatory: I do know of a shipment of cotton p. Windsor Castle, being 1,058 bales, forwarded by the defendant and consigned to Henry Gore Booth. I became possessed of the bill of lading thereof, on or about the 26th September, 1850. I received it from the plaintiffs, in payment of Mr. Henry Gore Booth's acceptances against the same to the amount of £9,162 6s. 8d., and on my agreeing to pay two other bills, amounting together to £2,683 9s. 8d., also drawn against the same, but not then come forward.

2d. To the second interrogatory: I acted in the said transaction solely as the agent of Mr. Henry Gore Booth, and my authority was verbal to arrange for the delivery of the cotton to me on payment of the above mentioned bills, and to sell it on account of Mr. Booth.

3d. To the third interrogatory: The time I received the bill of lading, as before mentioned, Mr. Booth informed me that the bills mentioned in my answer to the first interrogatory, amounting respectively to £9,162 6s. 8d. and £2,683 9s. 8d., had been drawn against the said shipment. I had no knowledge or suspicion of any other bill having been drawn against it, and I have no reason to think that the plaintiffs were aware of any other bill drawn or intended to be drawn against the shipment.

4th. To the fourth interrogatory: I do know of the sterling bill drawn by the defendant upon Henry Gore Booth for £4,417 14s. 11d., due 9th December, 1850. I accepted the same to the extent of £2,571 18s. 7d., for procuration for Mr. Booth, and athis request.

5th. To the fifth interrogatory: I received the bill of lading and the shipment it represented, and gave the acceptance last referred to merely as an agent for Mr. Booth. The bills mentioned in my answer to the first interrogatory were accepted by Mr. Booth himself.

6th. To the 6th interrogatory: The shipment was made on Mr. Booth's account, and he received the full benefit of the proceeds thereof on account current with me.

7th. To the seventh interrogatory: The bill referred to as having been accepted by me for £2,571 18s. 7d., for procuration for Mr. Booth, was not paid at maturity, owing to Mr. Booth's failure, which happened on or about the 15th November, 1850.

8th. To the eighth interrogatory: I cannot answer this interrogatory, having no knowledge of the subject.

9th. To the ninth interrogatory: The first sterling bills were not paid immediately on presentation, but they were paid three days afterwards, when I made it a sine qua non that the bill of lading should be delivered up to me. I would not have paid the bills except on this condition, and would not have permitted the holders to retain the bill of lading.

10th. To the tenth interrogatory: I know not, except that I am not in any way interested in the result of this suit, and except that, in

reply to a letter from the plaintiffs to me, dated 30th November, 1850, from which they appeared to be under an erroneous impression as to what had passed verbally between me and them, I intimated to them that I did not consider myself in any way bound for payment of the said acceptance for £2,571 18s. 7d. Such intimation was conveyed to them by letter, dated and sent to them on the 30th November, 1850, which is now produced and marked A. In point of fact, I never entered into any agreement or understanding with the plaintiffs, that if they should receive further bills beyond the said bills for £9,162 6s. 8d. drawn against the said shipment, I would protect them to the extent of the proceeds of the cotton, except so far as related to the said bills amounting to £2,683 9s. 8d., which I did engage to pay, as already stated, and I did not enter into any personal engagement to pay the said acceptance for £2,571 18s. 7d.

1. To the first cross interrogatory: I am the only individual carrying on business under the firm of A. E. Byrne & Co.

2. To the second cross interrogatory: The business was transacted in the name of my firm, so far as custom-house business and general business transactions were concerned, but the acceptance for procuration of Mr. Booth was given in my individual name. I had no written authority from Mr. Booth.

3. To the third cross interrogatory: Mr. Booth resided in Helensburgh, on the Clyde, in Scotland; he was a ship owner and importer of cotton; he had no other business that I am aware of; his visible property, so far as my knowledge extended, consisted of three vessels, which were apparently unincumbered, worth about £17,000.

4. To the fourth cross interrogatory: The 1,058 bales of cotton were sold by me, and I received the proceeds, namely, £14,578 13s. 8d., which were more than sufficient to pay the whole amount of the bills drawn on it, and accepted by Mr. Booth.

5. To the fifth cross interrogatory: Mr. Booth did not personally get the cotton, nor did he personally receive any of the proceeds, but he got the benefit of the whole. The proceeds were first applied in repayment of the bills mentioned in my answer to the first interrogatory in chief, amounting together to £11,845 16s. 4d., drawn against the shipment, which I had paid for Mr. Booth, and the balance was placed to his credit in account with me, he being then indebted to me in more than the amount of such balance, in respect of advances made to him. I had a large running account with him, extending over about three years, and after receiving the bill of lading for the cotton by the Windsor Castle, I advanced moneys on his account, exceeding the balance of the said shipment so placed to his credit.

6. To the sixth cross interrogatory: Booth was indebted to me, as stated in the preceding answer, and I applied the sum of £2,732 13s. 4d., less interest, being the balance of the proceeds of the said cotton, towards repayment of his indebtedness to me, as stated in my preceding answer, over and above the amounts paid on the said drafts.

7. To the seventh cross interrogatory: The bills for £9,162 6s. 8d.

were accepted and returned to Dennistouns immediately after presentation, and they then held both bills and bill of lading. I afterwards cashed the bills for £9,162 6s. 8d., on their giving me up the bill of lading; and at the same time I verbally engaged the further bills for £2,683 9s. 8d., which were the only bills against the shipment, so far as I know. Booth did not cash these bills before they became due, but I did. I paid the drafts for £9,162 6s. 8d., on the 26th September, 1850, when the bill of lading was given up to me; and I paid the further drafts for £2,683 9s. 8d. on the 21st of October, 1850, according to my agreement. There was no assignment of the bill of lading to me by Dennistoun, except by handing it over to me. It was simply endorsed in blank by the shipper, as usual.

8. To the eighth cross interrogatory: The plaintiffs expected other bills to come forward against the shipment at the time they delivered to me the bills of lading, namely, the said bills amounting to £2,683 9s. 8d. To the best of my knowledge and belief, they did not expect any other bills, and they certainly did not speak of or allude to any others.

9. To the ninth cross interrogatory: My business is that of a ship owner and American commission merchant. It is my business to sell cotton, but not to buy bills of exchange.

10. To the tenth cross interrogatory: The usual custom in Liverpool is to pay for cotton purchased in the States by bills at sixty days sight on the importers, who sometimes pay the bills before maturity, under discount, particularly where the bill of lading accompanies the bills drawn against the shipment; money or cash is very seldom sent on.

11. To the eleventh cross interrogatory: The first batch of bills were paid before maturity.

12. To the twelfth cross interrogatory: I do not know of any such fact.

AND. E. BYRNE.

Taken, signed, and sworn, this sixth day of May, 1853, before me, by virtue of the commission hereto annexed.

ROB'T HIGGIN.

I hereby certify that the witness, Andrew E. Byrne, is personally known to me.

ROB'T HIGGIN, *Commissioner.*

Exhibit A—Letter referred to in 10th interrogatory in chief.

Letter—Byrne to Dennistoun & Co.

Messrs. A. DENNISTOUN & Co., *Liverpool.*

DEAR SIRS: In reply to your letter respecting an acceptance of Mr. Henry Gore Booth's for £2,571 18s. 7d., I beg leave to say that my impressions regarding it are not in keeping with yours, and that I do not consider myself any way bound for its payment.

Yours, respectfully, AND. E. BYRNE.

BEAUFORD PLACE, 30*th November*, 1850.

This is the letter mentioned to be marked A, and referred to by Andrew E. Byrne, in his answer to the tenth interrogatory in chief, taken before me, this 6th day of May, 1853.

ROB'T HIGGIN.

Exhibit B—Notice of protest attached to bill of exceptions.

Letter—J. Bell to James Reid & Co.

MOBILE, 15*th January*, 1851.

Messrs. JAMES REID & Co., *Mobile.*

DEAR SIRS: Please take notice that your draft, dated Mobile, 9th September, 1850, at sixty days sight, for twenty-five hundred and seventy-one pounds eighteen shillings and seven pence sterling, on Henry Gore Booth, esq., Liverpool, and by him accepted, was, on the 9th day of December, 1850, dishonored and protested, the holder of which said bill looks to you for payment. Yours, truly,

J. BELL, Jr.

Exhibit R—Reply, &c., attached to bill of exceptions.

Letter—James Reid & Co. to J. Bell, jr., & Co.

MOBILE, 22*d January*, 1851.

Messrs. J. BELL, JR., & Co.

DEAR SIRS: Your note of 15th instant was duly received, calling our attention to the fact that our bill for twenty-five hundred and seventy-one pounds eighteen shillings and seven pence sterling, was dishonored by payment being refused by the acceptor thereof.

We learn that prior to the failure of the drawee of this bill, Messrs. A. Dennistoun & Co. took the responsibility of giving up to the drawee of the bill or his agent the bills of lading for the cotton against which the bill was drawn.

We understand that bills of lading, attached to bill or bills of exchange, drawn against cotton, represented by the bills lading, to be a security for the payment of the bills; and as Messrs. A. Dennistoun & Co. have given them up, and thus parted with a security in their hands for the payment of said bill, we must consider ourselves exonerated from further liability on said bill.

We remain yours, very respectfully,

Mobile. JAMES REID & CO.

Writ of error bond.

Circuit court of the United States, fifth judicial circuit and southern district of Alabama.

A. DENNISTOUN & Co.
vs.
ROGER STEWART.

Know all men by these presents, that we, A. Dennistoun & Co., as principals, and N. H. Brown, as security, are held and firmly bound

unto Roger Stewart, the above named defendant, in the sum of five hundred dollars, to be paid to the said Roger Stewart, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 29th day of April, 1854.

Whereas the above named A. Dennistoun & Co. have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama:

Now, therefore, the condition of this obligation is such, that if the above named A. Dennistoun & Co. shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

A. DENNISTOUN & CO., [SEAL.]
By N. H. BROWN, *Agent*,
N. H. BROWN. [SEAL.]

I approve the above bond this 1st day of May, 1854.

JOHN GAYLE, *Presiding Judge*.

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judge of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in said circuit court of the United States, for the southern district of Alabama, before you, between Alexander Dennistoun, John Dennistoun, William Craig Mylne, and William Wood, partners, under the style of A. Dennistoun & Co., plaintiffs, and Roger Stewart, defendant, manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of June next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 29th day of April, A. D. 1854.

Attest: JOHN FITTS,
C. C. C. southern dist. Alabama.

Citation in error.

UNITED STATES OF AMERICA,
Southern district of Alabama, ss.

To Roger Stewart, or Messrs. Taylor and Hitchcock, his attorneys, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of June next, 1854, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, wherein Alexander Dennistoun, John Dennistoun, William Craig Mylne, and William Wood, copartners under the name and style of A. Dennistoun & Co., are plaintiffs, and the said Roger Stewart is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John Gayle, one of the judges of the circuit court of the fifth judicial circuit and southern district of Alabama.

Issued the 29th day of April, A. D. 1854.

JOHN GAYLE, *Judge, &c.*

Marshal's return.

Received, May 2d, 1854, and executed the same day by serving Taylor and Hitchcock with a copy of this citation.

C. M. GODBOLD, *U. S. M.*
By WILLIAM H. GASQUE, *D. M.*

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, hereby certify, that the foregoing (forty-six) pages contain a true and complete transcript of the record and proceedings had in said court, in a certain cause therein lately determined, wherein A. Dennistoun & Co. were plaintiffs, and Roger Stewart was defendant, together with the writ of error and bond and citation in error, as appears from the records of said court and papers in said cause on file in my office.

In testimony whereof I have hereunto put my hand and affixed the seal of said circuit court, at office, in the city of Mobile, [L. S.] this sixth day of May, in the year of our Lord one thousand eight hundred and fifty-four.

Attest: JOHN FITTS,
Clerk C. C. southern dist. Alabama.